

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Nancy G. Edmunds
Case No. 10-CR-20005

v.

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

MOTION HEARING and PRETRIAL CONFERENCE
before the Honorable Nancy G. Edmunds
Theodore Levin U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan

August 17, 2011

APPEARANCES:

For the Government: Mr. Jonathan Tukel, Esq.
Ms. Cathleen M. Corken, Esq.
Mr. Michael C. Martin, Esq.
United States Attorney's Office
211 W. Fort Street, Suite 2001
Detroit, MI 48226

For the Defendant: Mr. Umar Farouk Abdulmutallab, In Pro Per

Standby Counsel: Mr. Anthony T. Chambers, Esq.
ANTHONY T. CHAMBERS LAW OFFICE
535 Griswold, Suite 1330
Detroit, MI 48226

- - -

To obtain a copy of this official transcript, contact:
Suzanne Jacques, Official Federal Court Reporter
email: jacques@transcriptorders.com

I N D E X

<u>Proceeding</u>	<u>Page</u>
MOTION FOR COMPETENCY REVIEW	
Argument by Mr. Chambers	4
Response by Mr. Martin	4
RE: DEFENDANT ABDULMUTALLAB'S REQUEST FOR ADDITIONAL DISCOVERY MATERIALS	
Response by Mr. Tukul	16
Argument by Mr. Chambers	17
Response by Mr. Tukul	18
Argument by Mr. Chambers	19
Pretrial Conference	20

1 Detroit, Michigan

2 August 17, 2011

3 3:00 p.m.

4 - - -

5 THE CLERK: Court calls the case of the United
6 States versus Umar Farouk Abdulmutallab, Case Number 10-20005.
7 Place your appearances on the record please.

8 MR. MARTIN: Michael Martin, Jonathan Tukel and
9 Cathleen Corken for the government, Your Honor.

10 MR. CHAMBERS: Anthony Chambers and Stephon Johnson
11 along with Mr. Abdulmutallab, who is seated to my left.

12 THE COURT: We have quite a few matters to take up
13 today, the first being the sealed motion that was filed by
14 standby counsel last week, a few days ago, actually, and
15 there's been a fair amount of paper filed about that motion,
16 and I'd like to say for the benefit of everyone sitting there,
17 the motion was filed for a competency hearing for
18 Mr. Abdulmutallab, and it's my understanding that he was aware
19 that you were going to be filing that motion.

20 Is that correct, Mr. Chambers?

21 MR. CHAMBERS: Yes, he was aware of it.

22 THE COURT: Yes. I understand that he did not
23 authorize the filing of that motion, that you filed that
24 feeling that it was your obligation to the court to do so.

25 MR. CHAMBERS: That is correct.

USA -v- Abdulmutallab Case No. 10-CR-20005

1 THE COURT: All right. Would you like to speak to
2 that first, or would you like to hear from the government? Why
3 don't you speak to it first.

4 (3:03 p.m.)

5 MR. CHAMBERS: Your Honor, I think that with regard
6 to speaking to the motion, what is enclosed in the pleadings,
7 we would rely on that. It's two issues, I think, both as it
8 relates to standing trial, and secondly, with the ability to
9 self representation, but we'll rely on our pleadings.

10 THE COURT: All right. And Mr. Tukul or
11 Mr. Martin, Ms. Corken?

12 MR. MARTIN: Yes, Your Honor.

13 We, in our motion for the hearing today, we asked
14 for actually several things, one of which was a decision on
15 whether or not the sealed motion is in fact sealed.

16 THE COURT: Well, it was filed under seal, and I
17 think it was probably appropriately filed under seal,
18 notwithstanding your objections. I indicated when I scheduled
19 this hearing that the courtroom would be open and that we would
20 discuss the substance of it as if it had been filed without
21 being under seal, so --

22 MR. MARTIN: Yes.

23 THE COURT: So it's kind of a moot issue at this
24 point.

25 MR. MARTIN: It is moot for, with respect to that,

1 but I do want to highlight that, because going forward I think
2 it's important if we do have sealed pleadings that the normal
3 procedures be followed, so that there is a motion to seal and a
4 basis, so that the defendant knows that something has been
5 sealed and the reason for it, so that if he objects he can have
6 an opportunity to object.

7 THE COURT: I don't disagree with that. There
8 should be a motion to seal, the Court should rule on that. I'm
9 satisfied that in this particular instance, the motion was
10 filed by Mr. Chambers as an officer of the Court to bring to my
11 attention a matter that he thought needed to be addressed and
12 would best not be open as an initial matter.

13 MR. MARTIN: Yes, ma'am.

14 THE COURT: Okay.

15 MR. MARTIN: So then the second thing we asked for
16 was a hearing in which you would make inquiry of Mr. Chambers
17 and the defendant regarding the subject of the sealed motion so
18 that you could rule on that motion.

19 THE COURT: Yes, and that's what we're here for.

20 MR. MARTIN: And then the third thing we asked for
21 was some basic motion filing procedures, and the nature in
22 which Mr. Chambers filed the under seal motion is a concern to
23 us because it's our understanding that he did so ex parte, that
24 he did so without the knowledge of the defendant, filed it, and
25 then subsequently informed the defendant about it, and the

1 defendant in fact objected.

2 What we are suggesting to the Court is that, not
3 that Mr. Chambers not file motions even if the defendant
4 objects to them, but he simply follow two steps; one, show the
5 defendant the motion before he files it, and two, either have
6 the defendant sign it, or if the defendant doesn't sign it, so
7 indicate in the motion so that the Court then knows what the
8 defendant agrees with, what he doesn't agree with.

9 Right now, we're in a situation where we've had
10 several instances where Mr. Chambers has filed motions and it's
11 not clear whether the defendant agrees or disagrees. We have
12 to then have a hearing, the defendant has to be brought down,
13 you have to ask the defendant do you agree with this, do you
14 not agree with it. There is no record on the docket as to what
15 he has actually signed and agrees to or not.

16 THE COURT: Well, I don't think that's accurate. I
17 think that this is the only motion that was filed without an
18 explicit agreement by the defendant that he wanted the motion
19 to be filed.

20 In addition, I believe that Mr. Chambers did
21 discuss this motion with the defendant, who had, as I
22 understand, some mixed feelings about it and did not agree with
23 it, but that Mr. Chambers then went ahead and filed it as an
24 officer of the Court. Given the nature of the motion, I
25 completely understand that, but I don't think this is a matter

1 of an ongoing practice. My experience has been that
2 Mr. Chambers, when he files motions, does get the agreement of
3 Mr. Abdulmutallab before he files the motions, and files along
4 with the motion either a signed copy or an assent to the
5 motions.

6 MR. MARTIN: Well, there have been instances where
7 motions have been filed and there is no indication in the
8 motion where the defendant agrees or doesn't agree, and then
9 after the fact, sometimes several days after the fact, along
10 comes an indication that the defendant does consent.

11 And in at least one instance that I can recall,
12 after the motion was filed we asked for a hearing, just like we
13 did this time, to indicate whether the defendant agrees or does
14 not agree, and then comes the permission.

15 What I'm suggesting -- or the hearing.

16 What I'm suggesting is that just by following a
17 simple procedure we cannot only obviate the need for hearings,
18 we can then have a clear record on the docket as to what he
19 agrees to and what he doesn't so that then you know and we know
20 where there's differences of opinion.

21 THE COURT: Well, I don't want to overstate what
22 you know and what I know or don't know. I think we all know
23 that Mr. Abdulmutallab has agreed to every motion that's been
24 filed with the exception of this one sealed motion.

25 MR. MARTIN: That's correct.

1 THE COURT: I don't disagree with you that it would
2 be preferable, and I will ask Mr. Chambers, please, to have
3 the signature or assent of Mr. Abdulmutallab filed
4 simultaneously with any future motions that are filed. He
5 wants to represent himself, we've respected that request, and I
6 believe that he needs to be on board at the outset so we don't
7 need to go afterward and get the assent or the agreement with
8 the motion even if you had an oral agreement previously.

9 I don't think any hearing would have been obviated
10 by an earlier signature. Hearings are required on these
11 motions, and that's --

12 MR. MARTIN: In this case I agree, I agree.

13 So, and turning to that, I don't know how the Court
14 wants to proceed, but I would just offer perhaps a suggestion.

15 THE COURT: Go ahead.

16 MR. MARTIN: If you were to conduct an inquiry of
17 the defendant regarding the subject of the motion for
18 competency, one technique that I think could be helpful for the
19 record is to ask the defendant open-ended questions; ask him to
20 explain in his own words, you know, for example, who you are
21 and what your role in the case is, who Mr. Chambers is, what
22 his role in the case is, what's --

23 Those types of questions go to --

24 THE COURT: With all due respect, Mr. Martin, I
25 don't think that's really the nature of this. He knows who I

1 am, he knows who Mr. Chambers is. The question is, you know,
2 is he sufficiently aware of the nature of the charges and the
3 possible penalties so that he is competent to represent himself
4 and go forward and defend himself against those charges, and
5 given the possible penalties.

6 MR. MARTIN: Well, I don't know, because there
7 weren't many specifics in the motion about the basis for the
8 motion. I don't know exactly what the issue is with
9 competency, but I would suggest to the Court that it is broader
10 than just understanding the charges. I mean, he has to be able
11 to understand the proceedings in all the respects --

12 THE COURT: Yes.

13 MR. MARTIN: -- and who the parties are and how to
14 proceed at trial, so I think whatever questions the Court may
15 want to ask, all I was doing is suggesting you may want to ask
16 nonleading, open-ended questions so you hear from the defendant
17 in his own words what his understanding of the proceedings are.

18 THE COURT: Mr. Chambers.

19 MR. MARTIN: Thank you.

20 (3:11 p.m.)

21 MR. CHAMBERS: Briefly, just so the record is
22 clear, this was the only motion that he did not agree with in
23 advance, and secondly, as it relates to the filing of the
24 signature after the motion, that was done because
25 Mr. Abdulmutallab had actually signed already previous copies,

1 written on it, made changes to it, so that those modifications
2 had to be made as if it was a draft.

3 THE COURT: And I would say for the record that you
4 brought that to my attention, or your colleague brought that to
5 my attention and asked if they should be filed with the
6 handwritten edits on it, and I thought that the record would be
7 clearer if he -- if they were retyped as he wanted them filed,
8 and that he had then assented to it.

9 MR. CHAMBERS: Secondly, as it relates to filing
10 matters under seal, this case is one where there is a
11 protective order, and there's a protective order which we've
12 been trying to abide by, that we agreed to in order to be able
13 to review the discovery in this case. If we are to file all
14 matters publicly, that obviously will be inconsistent with the
15 protective order. We have no problem with that if that's what
16 the Court instructs us to do, or what the government would like
17 to do.

18 We've noticed that while we are abiding by the
19 protective order, many of the government's pleadings and
20 filings actually include comments on the evidence which we
21 cannot discuss publicly because of the protective order. So
22 it's a little uneven handed, unfortunately, but we will
23 continue to abide by the protective order unless it's
24 abolished.

25 THE COURT: All right. Let me ask you before you

1 sit down, you're not withdrawing the motion for a competency
2 hearing?

3 MR. CHAMBERS: I am simply asking the Court to make
4 a determination whether or not an exam would be appropriate.
5 We bring the matter to the Court's attention, and we'd ask the
6 Court simply to determine whether or not there even should be
7 one.

8 THE COURT: All right.

9 MR. CHAMBERS: I believe Mr. Abdulmutallab is not
10 in agreement with it.

11 THE COURT: Mr. Abdulmutallab, could you step
12 forward please.

13 I need to ask you a few questions. Could you raise
14 your right hand, please, and be sworn.

15 THE DEFENDANT: Yes.

16 THE COURT: Do you solemnly swear the testimony
17 you're about to give in the matter here pending shall be the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. You understand -- have you gone
22 over the indictment in this case on your own and with standby
23 counsel, Mr. Chambers?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand the counts that are

1 filed against you and the nature of the charges that you're
2 facing in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: And you've discussed the charges and
5 the possible penalties with Mr. Chambers?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had an opportunity to review
8 the discovery materials that are -- that have been produced by
9 the government in this case?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you been able to review any
12 questions that you have about the discovery with standby
13 counsel, Mr. Chambers?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you feel that you understand the
16 discovery materials that have been produced in this case?

17 THE DEFENDANT: Yes.

18 THE COURT: And you filed with the Court a letter
19 that's dated August 15, 2011 in which you asked me to produce a
20 number of additional discovery materials. Did you draft this
21 letter?

22 THE DEFENDANT: Yes. I discussed it with standby
23 counsel, and then they produced a letter and they showed me the
24 draft, and I was happy with the draft, and I signed it.

25 THE COURT: Okay. And does this letter adequately

1 set forth the additional materials that you would like to
2 review before the trial begins in this case?

3 THE DEFENDANT: Yes.

4 THE COURT: I've asked you on prior occasions and
5 will ask you again now, are you satisfied with your
6 relationship with Mr. Chambers and the assistance he's been
7 able to give you in preparing for the trial in this matter?

8 THE DEFENDANT: Well, certainly it's -- it's
9 certainly -- I feel it's a more -- I have a more decent standby
10 counsel. I wouldn't say I'm 100 percent satisfied, but I think
11 that's just the way it's going to go.

12 THE COURT: And are you comfortable that you
13 understand my role in this case and what function I will play
14 as this trial goes forward?

15 THE DEFENDANT: Yes.

16 THE COURT: And you're aware of the role being
17 played by the United States -- assistant United States
18 attorneys in this case?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Can you tell me in your own
21 words what kind of penalties you are facing if you were to be
22 convicted of all of the counts in this complaint -- or
23 indictment rather?

24 THE DEFENDANT: Life charges.

25 THE COURT: So you know that if you were to be

1 convicted of the charges in this indictment that there would be
2 a possibility of life in prison?

3 THE DEFENDANT: Yes.

4 THE COURT: Is there any matter in which you feel
5 that you have questions that have not been adequately addressed
6 or answered or in which you are confused or puzzled by
7 procedure?

8 THE DEFENDANT: No.

9 THE COURT: Mr. Chambers, are there additional
10 questions that you'd like to address to Mr. Abdulmutallab or
11 have me address to him?

12 MR. CHAMBERS: No.

13 THE COURT: All right. Any for the government?

14 MR. MARTIN: No, Your Honor.

15 THE COURT: All right. I have to say,
16 Mr. Chambers, that I've had the opportunity to interact with
17 Mr. Abdulmutallab on a number of prior occasions in court, that
18 I've not had any sense that he does not understand the charges
19 against him or that he is not able to assist you with this
20 matter.

21 I understand that it's stressful for any defendant
22 moving toward a criminal trial in which he faces the kind of
23 penalties that Mr. Abdulmutallab is facing, but I have not had
24 any reason to question his competence to move forward in this
25 case, nor to represent himself.

1 He -- I would have to characterize this as somewhat
2 of a hybrid representation in that he has sought your
3 assistance on a number of matters even though he prefers to
4 represent himself, and I'm comfortable with that, as well.

5 Let me ask you one additional question,
6 Mr. Abdulmutallab. You understand that Mr. Chambers has asked
7 that you be examined for competency to go forward in this case?

8 THE DEFENDANT: Yes, I understand that.

9 THE COURT: And what's your position on that?

10 THE DEFENDANT: I guess, simply, I believe I'm
11 competent to proceed by myself and I do not wish to have the
12 examination.

13 THE COURT: And if I were to order the examination,
14 would you cooperate with it?

15 THE DEFENDANT: Well, one thing was, as I -- as he,
16 Mr. Chambers said when -- because when we discussed about the
17 motion is initially my idea was perhaps I would even -- that
18 would be a good thing to prove my competency to proceed
19 standby, but then when he put it to me that, you know, the kind
20 of -- the reasons why, or the arguments that have to be put
21 forward before even someone has that type of examination, and I
22 said that's counter productive to what I even want, so I don't
23 want the examination.

24 THE COURT: All right. I'm satisfied that
25 Mr. Abdulmutallab is in fact competent to proceed in this

1 matter, and I have no reason to believe that he is not, and I
2 think that there needs to be more of a showing than was set
3 forth in the motion that was filed in this case to order a
4 competency exam. I'm going to deny the motion without
5 prejudice.

6 If something arises that makes you feel it
7 important to renew that motion, then by all means please do so.

8 Okay. That's issue number one. You may sit down.

9 Now, I'd also like to take up the issue of the
10 letter that was filed in which Mr. Abdulmutallab requested
11 about ten additional discovery materials.

12 Government have a copy of that, Mr. Martin?

13 MR. MARTIN: Yes, we do, Your Honor. I think
14 Mr. Tukul will address the letter.

15 THE COURT: All right. Mr. Tukul.

16 MR. TUKEL: Yes, we do have it, Your Honor.

17 THE COURT: Does the government object to any of
18 the discovery requested?

19 MR. TUKEL: Well, I guess as to the publicly
20 available materials, documentaries, and the first two items are
21 documentaries, those are publicly available. I mean, they are
22 not exclusively within the government's control. In fact, I
23 don't believe I even have a copy of one. It's available on the
24 internet, Mr. Chambers could certainly obtain it without any
25 difficulty, and I think Rule 16(E) speaks to exclusive

1 possession by the government, not something that's publicly
2 available.

3 As to the third item, which requests all
4 documentaries, I don't know what the scope of that is. I can't
5 possibly know all documentaries that are out there, even in
6 English, let alone in other languages, so I don't know how we
7 could possibly comply with that.

8 THE COURT: Let's take this one at a time. With
9 respect to the first two items, the documentary entitled Yemen
10 and the War on Terror and the documentary entitled How Safe Are
11 Our Skies, Mr. Chambers, those are publicly available.

12 MR. CHAMBERS: I can probably shorten this a little
13 bit. We can provide those materials to him. The issue is his
14 being able to receive those at Milan.

15 THE COURT: Okay. I can take care of that.

16 MR. CHAMBERS: That's the issue.

17 THE COURT: Is that with respect to all of these?

18 MR. CHAMBERS: With respect to all of the items,
19 yes.

20 THE COURT: So they're all available, and it's just
21 a question of whether the prison officials will let him have
22 them.

23 MR. CHAMBERS: Correct. That includes the
24 transcripts, et cetera, we had discussed previously. We sent
25 them, the facility will not allow him to have those materials.

1 He'd like to have them to review for purposes of his defense.

2 THE COURT: All right.

3 MR. TUKEL: As to the materials, Your Honor, I have
4 no objection. However, under the second section of the letter
5 referring to what the institution will or will not allow in, I
6 don't think a radio has anything to do with the defense, and
7 the Economist, Time, Newsweek, Science, Discovery, and all -- I
8 don't know what that last one is, J-u-m-u-a-h, I don't think
9 there's been any showing that that's in any way material to the
10 defense. Those are not items the government intends to
11 introduce.

12 THE COURT: No, no, no, I think those are probably
13 outside the scope of discovery. It's just a question of
14 whether he can have them or not.

15 MR. TUKEL: Well, as to the radio, I know it's the
16 institution's position that he cannot.

17 THE COURT: Right, and I'm not trying to override
18 the institution's position on that.

19 MR. TUKEL: And the same with the magazines, Your
20 Honor?

21 THE COURT: The same with magazines.

22 With respect to all media articles that cover the
23 case, I don't think there's any way, I mean, we could ever say
24 that we have all media articles. I assume you have some media
25 articles that you want to provide to him that the prison

1 officials aren't letting him have, is that right?

2 MR. CHAMBERS: That is correct. He wants to be
3 able to review those for purposes of jury selection so that he
4 has an idea of what has been in the media, what's been in the
5 press, and potentially what a juror may have read.

6 THE COURT: But the landscape of those articles or
7 the volume of those articles is circumscribed. You have
8 articles, you're not asking that anybody undertake a search.

9 MR. CHAMBERS: No, we have the ability to provide
10 him with the materials, as I indicated, to the extent that he
11 needs them, we can do that.

12 THE COURT: Okay. So with respect to the matter
13 generated by NYU Law School, the media articles, and the trial
14 transcript, I'll ask that the prison officials let him have
15 that.

16 With respect to the radio and the magazines,
17 whatever the prison policy is, that's the policy that will
18 apply to Mr. Abdulmutallab, as well. If the policy is that the
19 prisoners don't get a radio, then he doesn't get a radio
20 either. The other material, there shouldn't be a problem.

21 Yes?

22 MR. CHAMBERS: Stand up.

23 THE DEFENDANT: One thing I just want to add on
24 that is, in fact, the last word I got was the reason why the
25 prison would not provide those materials is because the U.S.

1 Attorney said I cannot get it, and in fact, you know, other
2 inmates in the vicinity where I am can have a, you know, those
3 items such as radio, and so on.

4 THE COURT: Well, I have the ability to override
5 the U.S. Attorney on those issues, I believe, so if those
6 materials are available generally to other prisoners, you
7 should not be treated any differently. If they're not
8 available to other prisoners, you wouldn't be treated any
9 differently either, okay?

10 THE DEFENDANT: Yeah. As I said, you know, for
11 example, like the radio, the radio, other inmates can get the
12 radio.

13 THE COURT: Okay. Well, I'll see, I'll check.

14 Whatever is generally available to others, you may
15 have as well. If it's not available to others, then you don't
16 get it either, okay?

17 THE DEFENDANT: Uh-huh.

18 THE COURT: All right.

19 So we'll move forward on this, and I will --
20 someone from my chambers will report back to you and to the
21 assistant U.S. attorneys with respect to the response of the
22 prison officials with respect to these issues.

23 Now, with respect to the proposed jury
24 questionnaires and the procedure for jury selection, I have the
25 objections that were filed by the U.S. Attorney's office.

1 Mr. Chambers, you did not file any objections, is
2 that right?

3 MR. CHAMBERS: That is correct, but there are a few
4 that we believe the wording has to be adjusted in a couple of
5 questions.

6 THE COURT: Okay. Were you going to let us know
7 that?

8 MR. CHAMBERS: Yes, Your Honor. Because of the
9 timing and Mr. Abdulmutallab's availability, it was difficult
10 to get him these in advance, and my understanding is he did
11 receive them and has had a chance to look at them, but there
12 are just some slight wording on maybe four questions.

13 THE COURT: Okay. Then let me just quickly go over
14 some of the changes that I've made. Do you have a copy of the
15 questionnaire?

16 With respect to Question Number 4, the ethnic
17 background, I'm going to leave that question in.

18 With respect to Question 12, I'm going to leave
19 that question in. That asks the country in which your parents
20 were born.

21 I'm going to strike Questions 13 and 14. That was
22 father's and mother's occupation.

23 And I should indicate to those who are just
24 observing here that these are in response to the government's
25 objections. I'm just responding specifically to them.

1 On Question 1, I agree that the only countries that
2 need to be inquired about are Nigeria, Yemen and the United
3 Arab Emirates, and we'll strike all the other countries.

4 I am leaving in Question Number 20 but striking
5 Questions 21, 22 and 23.

6 And I am leaving Question 24 in, except that I'm
7 striking out, "Any of your close personal friends." So
8 Question 24 is, "Do you, your spouse, or any of your immediate
9 family members belong to any organization that deals with or
10 attempts to influence United States foreign policy in the
11 Middle East?"

12 On Question 30, I'm changing that to say 5 years
13 instead of 15 years.

14 I am striking Questions 41, 42, 43, ask about
15 specific pilot training.

16 I am striking all of Question 47, and substituting
17 instead a general question that asks, "Do any of your life
18 experiences affect your perception of Muslims? If so, please
19 explain."

20 I am striking Question 50.

21 I am striking Question 54.

22 And I am changing Question 55, the last sentence
23 will now read, "Will you be able to comply with these
24 restrictions?" And then it says, "If no, please explain."

25 Question 69 has been expanded to include the

1 following phrase at the end, "Or have you had any such dispute
2 in the past?"

3 And I'm striking Question 70.

4 On Question 71, I am striking the first sentence
5 which says, "There may be evidence introduced in this case
6 about the activities of American and foreign intelligence
7 services," since the government indicated there won't be.

8 The government objected to kind of the length of
9 Question 72, but I'm going to leave it in, except that, well, I
10 guess I'm just leaving it in as is.

11 I'm leaving Question 74.

12 Question 75B has been restated as follows. It
13 says, "The government alleges that defendant has associated
14 with Al-Qaeda," and I have added this at the end, "Despite any
15 views you might have concerning Al-Qaeda, can you decide this
16 case based solely on the evidence presented at trial?"

17 On Question 78, I have limited that question to the
18 person answering only, so have struck the, "Anyone in your
19 family or close personal friend."

20 On the questions that are number 79 through 87, I'm
21 leaving in only Question 81 and 86.

22 On the next page, I'm leaving in Questions 89 and
23 90; striking 88 and 91.

24 I'm striking Question 92.

25 Question 93, I'm going to substitute the statement

1 of the case that the government has just provided.

2 On Question 101, I have added the following phrase
3 so that it now reads, "Have you heard any statements by any
4 U.S. government officials or by any attorneys involved in this
5 case concerning the defendant?"

6 And then I'm striking Question Number 102 and 106.

7 On Question 110, I've added the following, "Do you
8 know anyone in the United States Attorney's Office in Detroit,
9 Michigan, or standby counsel, Anthony Chambers, or anyone in
10 his office?"

11 And on Question 111, "Do you," and then I've
12 crossed out, "Your spouse, any member of your family or any of
13 your close friends," so it just says, "Do you know or have any
14 connection with the defendant Umar Farouk Abdulmutallab?"

15 I have stricken Question 112.

16 Question 118, I have redrafted that to say, "If you
17 are selected to serve as a juror in this case would you be
18 concerned about reactions to the verdict by anyone?"

19 And then on Question 131, I think the government is
20 correct, I can't really give the jurors a witness list at the
21 time. I mean, I don't know what your plan is in terms of
22 producing a witness list. Some of the names must obviously be
23 known by now, and it would be helpful to give them the ones
24 that you know, but there's nothing that compels you to do that
25 if you don't want to.

1 MS. CORKEN: Our preference would be to wait until
2 the day of trial to announce the identities of the witnesses,
3 given the nature of the case.

4 THE COURT: Okay. Then we'll strike 131.

5 I'm also going to strike 132, 133, 134.

6 LAW CLERK: Judge, on 131, are you going to leave
7 it in about the list of the attorneys and the court personnel
8 and yourself?

9 THE COURT: I think I've already asked that.

10 LAW CLERK: I didn't see it anywhere else.

11 THE COURT: Oh, yeah, 131, I'm going to, yes, I
12 will ask if they know me or any court personnel or attorneys.

13 So 132, 133, 134, I'm going to strike, and that's
14 it.

15 And your objections -- okay.

16 MS. CORKEN: That's fine. Thank you.

17 THE COURT: Mr. Chambers, are you going to get
18 those objections to us right away?

19 MR. CHAMBERS: Yes, and you have addressed all but
20 one.

21 THE COURT: All but one?

22 MR. CHAMBERS: Yes, and I would indicate it's
23 Question 108, Page 35.

24 THE COURT: Question number?

25 MR. CHAMBERS: 108, one zero eight.

1 THE COURT: You just want to rephrase that?

2 MR. CHAMBERS: Yes.

3 THE COURT: Can you tell me how you want it

4 rephrased? Because maybe we can just do that now.

5 MR. CHAMBERS: Just maybe even take out the word

6 "massive."

7 THE COURT: All right. I agree with that.

8 All right. Then this questionnaire, the procedure
9 will be as follows. We're calling in about 250 jurors. They
10 will be called in on September 14th in two phases; half in the
11 morning at 10:00 --

12 THE CLERK: 9:00.

13 THE COURT: 9:00? 9:00, and then half in the
14 afternoon at 2:00.

15 I will give them some opening instructions, some
16 general instructions about the case and the procedure for
17 filling out the questionnaire.

18 My plan would be that Mr. Abdulmutallab would be
19 here in this courtroom, and that the jurors would be in Room
20 115, but that we would have a video feed so that
21 Mr. Abdulmutallab can watch the proceedings in 115, and the
22 jurors can be aware of Mr. Abdulmutallab being here in this
23 courtroom.

24 So we'll do it in two phases, at 9:00 and at 2:00.

25 The jury department has indicated that they can get

1 the questionnaires copied by, what did they say, two days,
2 Carol?

3 THE CLERK: Yes, they said they'd have it ready by
4 Monday, the 19th, by noon.

5 THE COURT: Okay. On Monday, the 19th, by noon,
6 but they're hoping to get it done by Friday, which is the 16th.

7 Okay. Then we will reconvene, you'll have a chance
8 to review the questionnaires, obviously. We'll reconvene on
9 the, what did we decide, the 21st or 22nd? What day of the
10 week is the 22nd?

11 THE CLERK: 22nd is a Thursday.

12 THE COURT: Let's do this on the 22nd. What's the
13 time?

14 THE CLERK: 10:00.

15 THE COURT: All right. At 10:00, the 22nd at
16 10:00.

17 And what I would propose is this, I would ask you
18 in advance of that to separate the questionnaires into three
19 piles; one is "clearly unacceptable," second is "clearly
20 acceptable" to your side, and then the third would be
21 "questionable." So we can, on the 22nd, eliminate anyone from
22 the pool who both sides have agreed is clearly unacceptable,
23 and then we can also argue on the 22nd the suitability of
24 anyone in that middle range.

25 Now, I don't know if we're going to have a chance

1 to do all of the arguments on that day, but we could at least
2 get a sense of some of them where there may be an issue. At
3 least on the 22nd, we can eliminate some portion that, by their
4 answers to the questionnaires, would not be suitable jurors
5 whether for vacations, or because of views that they hold, or
6 whatever.

7 MR. CHAMBERS: I'm just curious as to how the
8 Court, how would it be able to provide these to
9 Mr. Abdulmutallab for him to be able to review them between the
10 19th and the 22nd.

11 THE COURT: Well, hopefully they'll be done by the
12 16th and not the 19th, and I'm hoping that somebody from your
13 office would be able to take them out to Milan.

14 MR. CHAMBERS: That's fine, as long as we will have
15 actual copies that we can pick up and --

16 THE COURT: Oh, yes.

17 THE CLERK: They're going to scan them on a disk.

18 THE COURT: Does he have a computer there?

19 MR. CHAMBERS: He does have access to a computer
20 there. We could take the hard copies, or if they're on a disk,
21 we could certainly -- we'd have to get permission, obviously,
22 from Milan to send it in as if it's discovery, and then he
23 could look at them at his leisure, also.

24 THE COURT: I'll make sure that whatever form
25 they're in, he has the opportunity to look at them.

1 THE DEFENDANT: If it's a disk, I only have very
2 limited hours when I can view it, and perhaps that might not be
3 enough to view it in three days.

4 THE COURT: Well, let's see if we can get a hard
5 copy. I don't think that should be a problem.

6 Okay. And then following the -- I forgot that on
7 the 14th, following the instructions to the jury while they're
8 filling out questionnaires, we'll have a motion hearing on the
9 other motions that have already been filed; that is, the motion
10 to suppress statements and the motion for change of venue. I
11 think those are the only other motions outstanding right now.

12 THE CLERK: There's discovery.

13 MS. CORKEN: There are other motions.

14 THE COURT: Are there other motions besides the one
15 we just talked about?

16 MS. CORKEN: There's another motion under seal,
17 there is a motion for individual voir dire, there's a motion
18 for grand jury transcripts.

19 THE COURT: All right. We'll take all of those up
20 on the 14th.

21 Now, with respect to individual voir dire, my plan
22 would be this. Once we have eliminated from the jury pool
23 those who are clearly unsuitable, we'll take the week of
24 October 4th to begin the actual voir dire of individual jurors,
25 and I'm going to do them one at a time. We're going to

1 continue questioning individual jurors until we have a pool of
2 about 45 jurors, and we are going to seat 12.

3 Mr. Abdulmutallab is entitled to ten peremptories;
4 the government is entitled to seven peremptories, and then I'm
5 also going to seat four alternates, and the defendant is
6 entitled to two peremptories against the alternates, and the
7 government is entitled to two peremptories against the
8 alternates. So we'd have 10 plus -- or 12 plus 4, 16; plus 10,
9 26; plus 7, 33; plus 4, 37. But I'm going to qualify 45 just
10 in case.

11 As we question the jurors, I'm going to give each
12 side six minutes each with each individual juror, that is, I'll
13 ask some preliminary questions, and I will give counsel for
14 each side, Mr. Abdulmutallab himself, and counsel for the
15 government, six minutes to question each individual juror. And
16 then after each individual juror is questioned, I'm going to
17 ask for challenges for cause, so we'll get, as I said, 45
18 jurors qualified for cause. When we have 45, we'll stop, and
19 then exercise peremptories.

20 Carol is reminding me that we have a pretrial set
21 for the 15th which we won't need since we're doing this on the
22 14th.

23 Okay. Anything else I can cover for us today?
24 Mr. Chambers?

25 MR. CHAMBERS: I don't believe that there's

1 anything else.

2 THE COURT: Mr. Abdulmutallab?

3 THE DEFENDANT: No.

4 THE COURT: Okay. You need to stand when you're --
5 okay. So nothing else?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Tukul?

8 MR. TUKEL: Your Honor, at the last hearing, there
9 was a government motion to define the role of standby
10 trial(sic), and I think the Court indicated that it would be
11 sending out a proposed order delineating what, if any, sort of
12 hybrid representation would be allowed, and I don't think the
13 Court has done that yet. Do you intend --

14 THE COURT: I haven't, but I --

15 MR. TUKEL: Will that be the 14th, or will that be
16 prior to that time?

17 THE COURT: No, I'll try to get something out prior
18 to that time.

19 Let me say, because I have had a chance to review
20 the cases that have been cited by the government, and it's my
21 reading of those cases that the Court has wide discretion with
22 respect to allowing a hybrid type of representation with
23 certain limitations. One limitation, and the way in which
24 courts most often are reversed, is if the defendant wishes to
25 represent himself and the Court imposes on him counsel who he

1 does not wish to do things that he would prefer to do himself.
2 That is not the case here. Mr. Abdulmutallab, as long as he
3 proceeds in an orderly manner, and he has certainly done so up
4 to this point, may represent himself to the extent that he
5 wishes to do so, and I'm not trying to impose Mr. Chambers on
6 him in any way.

7 On the other hand, courts have also been given wide
8 discretion to permit the defendant to ask for assistance from
9 standby counsel for any matter in which he chooses to engage
10 standby counsel. The Court can deny it, and some judges do,
11 but I'm not inclined to deny it in this case. If
12 Mr. Abdulmutallab wishes the assistance of Mr. Chambers, I'm
13 going to let him utilize that assistance to the extent that he
14 wishes to do so.

15 The only limitation I am placing on that is that I
16 want this done in an orderly fashion. I want to know ahead of
17 time, at least the day before, and preferably more than that,
18 what Mr. Abdulmutallab wants to do and what he wants
19 Mr. Chambers to do on his behalf so we don't show up in court
20 and have some ongoing discussion about that on a daily basis.
21 I believe that it's important to keep orderly proceedings, and
22 I think that we can do so within those parameters.

23 (3:50 p.m.)

24 MR. TUKEL: One of the issues that's raised by
25 those cases, Your Honor, is the situation where a defendant

1 argues directly to the jury but does not testify. There's a
2 number of cases that discuss that.

3 At the last hearing, Mr. Abdulmutallab indicated
4 that he does wish to argue to the jury, but obviously we don't
5 know at this point whether he wishes to testify, so I guess I'm
6 not sure exactly how to deal with that situation, but the
7 government objects to the idea as those cases have indicated
8 that the defendant could argue essentially facts and not
9 testify to support those facts.

10 THE COURT: I'll have to take another look at those
11 cases. On that particular issue, I guess I'm not prepared to
12 comment right now.

13 Anything further, Mr. Chambers or
14 Mr. Abdulmutallab?

15 MR. CHAMBERS: No.

16 THE COURT: Mr. Tukul?

17 MR. TUKEL: No, Your Honor.

18 THE COURT: All right. Thank you.

19 I'm sorry, I did want to say one other thing that I
20 didn't make clear before, and that is the jurors in this case
21 are going to be identified by number only. No names will be
22 identified on their questionnaire. The only people who will
23 have the identifying information is the jury department.
24 They'll be -- and I'll explain all of that to them, but I want
25 the media to be aware that there will be no identification of

1 any jurors or potential jurors by name, by address, no
2 identifying information, and I'm issuing an order that starts
3 as of this moment that will say no contact by any member of the
4 media with any juror or potential juror or anyone filling out
5 questionnaires with respect to this case.

6 Okay. Thank you.

7 (Proceedings concluded 3:54 p.m.)

8 — — —

9
10
11
12
13
14 CERTIFICATE OF COURT REPORTER

15
16
17 I certify that the foregoing is a correct transcript
18 from reported proceedings in the above-entitled matter.

19
20
21 _____
22 SUZANNE JACQUES, RMR, CRR
23 Official Court Reporter
24 Eastern District of Michigan
25

Date